

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|--------------------|---|-----------------------|
| MERCK & CO., INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 06-230 (GMS) |
| |) | |
| APOTEX, INC., |) | |
| |) | |
| |) | |
| Defendant. |) | |
| |) | |

MERCK & CO., INC.'S REPLY TO COUNTERCLAIMS OF APOTEX, INC.

Plaintiff, Merck & Co., Inc ("Merck") responds to each of the numbered paragraphs of the Counterclaims of Defendant Apotex, Inc. ("Apotex") as set forth in DEFENDANT APOTEX, INC.'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS.

The first occurrence of Paragraphs 1-9 in DEFENDANT APOTEX, INC.'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS are admissions and denials of the allegations of Merck's complaint and require no reply. On page 16 of DEFENDANT APOTEX, INC.'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS, Apotex begins a second set of numbered paragraphs that set forth Apotex's Counterclaims, to which Merck replies as follows:

PARTIES AND JURISDICTION

1. Admitted.
2. Admitted.

3. Admitted that Apotex alleges that this Court has subject matter jurisdiction under the patent laws, Title 35 of the U.S. Code; The Declaratory Judgment Act, 28 U.S.C. § 2201; and 28 U.S.C. § 1338. Otherwise, denied.

4. Admitted that this court has personal jurisdiction over Merck. Otherwise denied.

COUNT I

5. Denied.

6. Merck is evaluating information provided to Merck by Apotex and, therefore denies the allegations of this paragraph at this time.

7. Merck is evaluating information provided to Merck by Apotex and, therefore denies the allegations of this paragraph at this time.

8. Merck is evaluating information provided to Merck by Apotex and, therefore denies the allegations of this paragraph at this time.

9. Merck is evaluating information provided to Merck by Apotex, and admits there is a justiciable controversy between the parties, subject to that review. Otherwise denied.

DEMAND FOR JUDGMENT AND PRAYER FOR RELIEF

Merck denies that Apotex is entitled to the overly broad relief requested. Merck denies that Apotex is entitled to a jury.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Mary B. Graham

Mary B. Graham (#2256)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
302.658.9200

Attorneys for Plaintiff Merck & Co., Inc.

OF COUNSEL:

John F. Lynch
HOWREY, LLP
750 Bering Drive
Houston, TX 77057-2198
713.787.1400

Nicolas G. Barzoukas
Suzy S. Harbison
Jason C. Abair
WEIL, GOTSHAL & MANGES
700 Louisiana, Suite 1600
Houston, TX 77002
713.546.5000

Paul D. Matukaitis
MERCK & CO., INC.
One Merck Drive
Whitehouse Station, NJ 08889-0100
908.423.1000

Edward W. Murray
Gerard M. Devlin
MERCK & CO., INC.
126 E. Lincoln Avenue RY28-320
Rahway, NJ 07065-0907
732.594.4000

Dated: May 30, 2006
522621

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2006, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to the following:

Richard L. Horwitz, Esquire
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 North Market Street
Wilmington, DE 19899

Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on May 30, 2006 upon the following individuals in the manner indicated:

BY HAND

Richard L. Horwitz, Esquire
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 North Market Street
Wilmington, DE 19899

BY FACSIMILE

Robert B. Breisblatt, Esquire
WELSH & KATZ, LTD.
120 South Riverside Plaza; 22nd Floor
Chicago, IL 60606

/s/ Mary B. Graham

Mary B. Graham (#2256)